

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 CLAYTON D KIRSH,

7 Plaintiff,

8 v.

9 RODEWAY INN HOTEL AND SUITES, et  
al.,

10 Defendants.

Case No. C21-5371 BHS

ORDER TO SHOW CAUSE

11  
12 This matter comes before the Court on plaintiff's application to proceed *in forma*  
13 *pauperis* and proposed complaint. Dkt. 1. Plaintiff is proceeding *pro se* in this matter.

14 This matter has been referred to the undersigned Magistrate Judge. *Mathews, Sec'y of*  
15 *H.E.W. v. Weber*, 423 U.S. 261 (1976); 28 U.S.C. § 636(b)(1)(B); Local Rule MJR  
16 4(a)(4); Dkt. 1. In light of the deficiencies in the complaint identified herein, it appears  
17 that plaintiff's complaint is subject to dismissal. The Court will provide the plaintiff the  
18 opportunity – by July 30, 2021– to show cause why plaintiff's complaint should not be  
19 dismissed.

20 FACTUAL BACKGROUND

21 Plaintiff brings this action on behalf of Serenity's Healing Place LLC under 42  
22 U.S.C. § 1983. Dkt. 1-1. Plaintiff's complaint alleges that he stayed at the Rodeway Inn  
23 and Suite in March 2020, May 2020, May 2021. Dkt. 1-1 at 7-11. Plaintiff alleges that  
24  
25

1 the hotel's condition and the staff's conduct were unsatisfactory. Dkt. 1-1 at 7-11. The  
2 complaint contends that the hotel staff engaged in criminal activity on the premises. Dkt.  
3 1-1 at 7-11. Plaintiff alleges that these conditions prevented him from conducting his  
4 business and caused him to suffer lost wages. Dkt. 1-1 at 4.

### 5 DISCUSSION

6 The Court must dismiss the complaint of a litigant proceeding *in forma pauperis*  
7 "at any time if the [C]ourt determines" that the action (i) "is frivolous or malicious"; (ii)  
8 "fails to state a claim on which relief may be granted" or (iii) "seeks monetary relief  
9 against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). A  
10 complaint is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*,  
11 745 F.2d 1221, 1228 (9th Cir. 1984).

12 Before the Court may dismiss the complaint as frivolous or for failure to state a  
13 claim, it "must provide the *pro se* litigant with notice of the deficiencies of his or her  
14 complaint and an opportunity to amend the complaint prior to dismissal." *McGuckin v.*  
15 *Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992). On the other hand, leave to amend need  
16 not be granted "where the amendment would be futile or where the amended complaint  
17 would be subject to dismissal." *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

18 When a plaintiff appears *pro se* in a civil rights case, "the court must construe the  
19 pleadings liberally and must afford plaintiff the benefit of any doubt." *Karim-Panahi v.*  
20 *Los Angeles Police Dep't*, 839 F.2d 621, 624 (9th Cir. 1988). However, this lenient  
21 standard does not excuse a *pro se* litigant from meeting the most basic pleading  
22 requirements. See, *American Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d  
23 1104, 1107-08 (9th Cir. 2000).

1           A. 42 U.S.C. § 1983

2           Plaintiff filed the proposed complaint pursuant to 42 U.S.C. § 1983. Plaintiff's  
3 complaint fails to state a cause of action under Section 1983.

4           To state a claim under 42 U.S.C. § 1983, a complaint must allege: (1) the  
5 conduct complained of was committed by a person acting under color of state law, and  
6 (2) the conduct deprived a person of a right, privilege, or immunity secured by the  
7 Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981),  
8 *overruled on other grounds, Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is  
9 the appropriate avenue to remedy an alleged wrong only if both of these elements are  
10 present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985). Vague and  
11 conclusory allegations of officials participating in a civil rights violation are not sufficient  
12 to support a claim under Section 1983. *Ivey v. Board of Regents*, 673 F.2d 266, 269  
13 (9th Cir. 1982).

14           Plaintiff's proposed complaint names two private entities and a number of  
15 individuals who work for the private entities. Dkt. 1-1. Plaintiff does not identify any  
16 person acting under color of state law that allegedly violated plaintiff's rights. Dkt. 1-1.  
17 Additionally, plaintiff does not state any facts alleging that any defendant violated  
18 plaintiff's federally protected rights. Dkt. 1-1.

19           For these reasons, plaintiff's complaint fails to state a claim under Section 1983.

20           B. Subject Matter Jurisdiction

21           Plaintiff's claim also fails to establish that the Court has proper subject matter  
22 jurisdiction to hear this matter.

1 Pursuant to Federal Rule of Civil Procedure 8(a), a pleading must contain: “(1) A  
2 short and plain statement of the grounds for the Court’s jurisdiction, unless the court  
3 already has jurisdiction and the claim needs no new jurisdictional support.” Pursuant to  
4 28 U.S.C. § 1331, district courts have subject matter jurisdiction over all actions arising  
5 under the Constitution, laws or treaties of the United States. Pursuant to 28 U.S.C. §  
6 1332(a), district courts have subject matter jurisdiction over civil actions where, “the  
7 matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and  
8 cost, and is between (1) Citizens of different States [...]” Finally, under 28 U.S.C. §  
9 1367, in a civil action where the district court has original jurisdiction, “the district court  
10 shall have supplemental jurisdiction over all claims that are so related to claims in the  
11 action within such original jurisdiction that they form part of the same case or  
12 controversy.”

13 As has been discussed, plaintiff’s complaint fails to state a claim for any violation  
14 of federal constitutional or statutory rights, under Section 1983. Plaintiff does not identify  
15 any other basis for jurisdiction under 28 U.S.C. § 1331. Plaintiff’s complaint states that  
16 he is a resident of Washington. Dkt. 1-1 at 3. All other named defendants are also  
17 residents of Washington. Dkt. 1-1 at 3. This lack of diversity between the parties  
18 precludes jurisdiction under 28 U.S.C. § 1332(a).

19 Based on the allegations in plaintiff’s proposed complaint, it appears that the  
20 Court lacks the subject matter jurisdiction to hear this matter.

### 21 CONCLUSION

22 Due to the deficiencies described above, it appears that plaintiff’s complaint is  
23 subject to dismissal. Plaintiff may show cause why his complaint should not be  
24  
25

1 dismissed or may file a proposed amended complaint to cure, if possible, the  
2 deficiencies noted herein, on or before **July 30, 2021**.

3 If an amended complaint is filed, it must be legibly written or retyped in its entirety  
4 and contain the same case number. Any cause of action alleged in the original  
5 complaint that is not alleged in the amended complaint is waived. *Forsyth v. Humana,*  
6 *Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled in part on other grounds, Lacey v.*  
7 *Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

8 The Court will screen the amended complaint to determine whether it states a  
9 claim. If the amended complaint is not timely filed or fails to adequately address the  
10 issues raised herein, the undersigned will recommend dismissal of this action as  
11 frivolous under 28 U.S.C. § 1915.

12 The Clerk is directed to send plaintiff the appropriate forms for filing 42 U.S.C. §  
13 1983 civil rights complaint and for service, a copy of this Order and the *Pro Se*  
14 information sheet.

15 Dated this 9th day of July, 2021.

16  
17 

18 

---

Theresa L. Fricke  
19 United States Magistrate Judge  
20  
21  
22  
23  
24  
25